

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Performance Measurements and Standards for)	
Unbundled Network Elements and)	CC Docket No. 01-318
Interconnection)	
Performance Measurements and Reporting)	
Requirements for Operations Support)	CC Docket No. 98-56
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
Deployment of Wireline Services Offering)	
Advanced Telecommunications Capability)	CC Docket No. 98-147
Petition of Association for Local)	
Telecommunications Services for Declaratory)	CC Docket Nos. 98-147,
Ruling)	96-98, and 98-141

COMMENTS OF THE COLORADO OFFICE OF CONSUMER COUNSEL

I. INTRODUCTION

The Colorado Office of Consumer Counsel (“OCC”) is the state agency that represents and advocates for residential, small business and agricultural utility consumers before the Public Utilities Commission for the State of Colorado (“CoPUC”), federal agencies including the Federal Communications Commission (“FCC” or “Commission”), and in the courts.

The OCC files its comments pursuant to the Notice of Proposed Rulemaking (“NPRM”) issued November 19, 2001, and the Order granting the Motion for Extension of Time filed by the United States Telecom Association issued December 7, 2001.

In the NPRM, the Commission, among other things, sought comment on whether or not to adopt a “select group of measurements and standards for evaluating incumbent

local exchange carrier (incumbent LEC) performance in provisioning of facilities that are used by their carrier-customers to compete for end-user customers.”¹ The Commission also sought comment on related issues, including specific national standards and measurements as well as the implementation and enforcement of any such national standards and measurements.

The OCC is primarily concerned with the impact of the proposed rulemaking upon the cooperative federalism created by the Telecommunications Act of 1996² (the “Act”) and the role of the state regulators with respect to the development and enforcement of standards and measurements.

The OCC appreciates the opportunity to comment on these issues to ensure the balance of state and federal interests remains in tact through the continuing regulatory structure. Accordingly, the OCC encourages federal action only to the extent that state commission authority is not further preempted. Rather, the Commission should act to foster and assist all interested parties in perpetuating the cooperative relationship between the Commission and the state commissions. The federal government has acted to open the telecommunication marketplace to competition, and states implement mandated statutory and FCC requirements while developing and implementing other requirements necessary to address local circumstances. The spirit of this cooperative partnership should be preserved.

If this Commission determines that it should and will promulgate national standards and measurements, the OCC recommends that those standards and

¹ Notice of Proposed Rulemaking, CC Docket No. 01-318, at 2.

² The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

measurements be permissive, not mandatory nor preemptive. States should be free to implement the Act by developing and adopting reasonable standards and measurements, incorporating appropriate enforcement mechanisms. Alternatively, a state may wish to adopt FCC-developed national standards and measurements, or a combination of the two. In no event should measurements be hastily adopted to destroy the value gained by state commissions through historical experience as well as six years of practice under the Act. So long as their actions are consistent with the Act and serve to advance competition, state commissions must be allowed to act for the interests of their respective locales.

II. EFFECTIVENESS OF CURRENT FEDERALISM

Preservation of the existing dichotomy is consistent with the expressed intent of the Act. The OCC supports the legal analysis of the Act presented by the CoPUC in its comments filed in these proceedings.³ Congress recognized, and provided for, the continuing vital role state governments play in carrying out the legislative intent of the Act. Existing jurisdictional boundaries should not be upset so that states may continue development of standards and measurements to determine incumbent local exchange carrier (“ILEC”) compliance (both initial and continuing) with obligations under the Act.

This Commission should not impose national standards and measurements in violation of this critical state function because the FCC is not in the best position to address unique local and regional circumstances. Being readily accessible, state commissions are uniquely situated to discover complaints of local customers and market participants dependent upon the telecommunications system. The ability to monitor local

³ Comments of the Public Utilities Commission of the State of Colorado, CC Docket No. 01-318, at pp. 4-5.

markets, as well as familiarity with market participants and local conditions, provides a strong foundation to address local concerns through timely implementation of remedial action.

III. COMMISSION ACTION SHOULD NOT THWART DEVELOPMENT AND IMPLEMENTATION OF STANDARDS FOR ILEC-TO-CLEC (OR CARRIER-TO-CARRIER) QUALITY OF SERVICE PERFORMANCE.

Colorado has encouraged local telecommunications market competition. The CoPUC has wide-ranging authority to address wholesale issues pursuant to authority derived from the Colorado Constitution and statutes. In its comments, the CoPUC describes the course of activities within the state implemented to develop and encourage local competition in Colorado. The OCC has participated extensively along with the CoPUC and industry participants in implementing this policy to ensure protection of Colorado residential, small business and agricultural utility consumer interests.

Several pending proceedings in Colorado further the parallel federal and state goals to open local telecommunications markets to competition. All case participants rely upon the strength of the existing regulatory scheme. Further, the markets (e.g. public, financial, regulatory and industrial) have come to rely upon the stability of the existing structure. Thus, the FCC should not disrupt the existing hierarchy as such disruption (e.g. introduction of preemptive national standards and measurements) creates uncertainty in the fledgling process, which will result in the deterrence of the intended competition.

The CoPUC has opened several dockets to address Qwest Communication, Inc. anticipated application to the FCC pursuant to § 271 of the Act. The OCC has advocated for adoption of a Colorado performance assurance plan (“CPAP”) to ensure

Qwest's future compliance with the Act, if it is granted § 271 approval. The CPAP measures Qwest's performance against the performance measures used to determine compliance with the § 271 competitive checklist in the first instance. If it decides to adopt national standards and measurement, the FCC should not disrupt emerging remedial plans like the CPAP. As the Commission recognized, the details of performance monitoring and enforcement mechanisms developed by states during the section 271 process may vary widely.⁴ Such flexibility afforded states should not be undercut.

IV. SCOPE OF ANY PROPOSED FCC ACTION

All participants in the existing regulatory process rely upon the Commission's guidance in the interpretation of the Act, including its application to development of performance measures and standards. If the Commission decides to promulgate national standards and measures, a national performance plan, or both, the FCC must follow its existing requirements. Further, the FCC should acknowledge the baseline nature of elements incorporated into performance assurance plans consistent with FCC rules and orders approving regulations and approving § 271 applications. Thereafter, existing performance plans should be considered for the nature of local considerations to be incorporated in any nationally scoped plan. While the OCC does not support further Commission action in this regard, it should be recognized that such an undertaking is more comprehensive than the NPRM. The comments of the CoPUC begin to address the

⁴ In the Matter of the Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion And Order, December 22, 1999.

necessary scope the Commission must address in proceeding further in this arena.⁵

Further, any action chosen by the Commission should proceed only in a permissive manner that is neither mandatory nor preemptive.

The OCC has invested significant resources, along with industry participants and the CoPUC, to ensure that Colorado has addressed the necessary elements in the CPAP for the protection of consumer interests in Colorado. The Commission should not thwart the efforts and successes in Colorado as incorporated in the CPAP.

V. Conclusion

The Colorado Office of Consumer Counsel acknowledges the importance of monitoring performance standards and measures to ensure local markets remain irreversibly open and is confident that the Colorado Performance Assurance Plan, as currently drafted, will achieve this purpose and protect Colorado consumers during the transition to a locally competitive market. The Commission should foster current practices to develop and maintain competitive local telecommunication markets. Participation of interested parties in the evolving marketplace will result in the best practices forming models for replication across the nation. Hasty regulatory efforts should not overcome valuable experience. The OCC urges the Commission to allow markets to continue their natural evolution. If the Commission should decide to act at all,

⁵ Comments of the Public Utilities Commission of the State of Colorado, CC Docket No. 01-318, at pp10-11

it should only offer benchmarks for permissive state adoption.

Respectfully submitted this 22nd day of January, 2002.

/s/

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